

A certification was issued covering all workers separated on or after May 18, 1994.

TA-W-31,255; Donnkenny Apparel, Inc., Christiansburg Garment Co., Christiansburg, VA

A certification was issued covering all workers separated on or after July 13, 1994.

TA-W-31,104; Mitchell Energy Corp., The Woodlands, TX & Operating in the Following States: A; CO, B; LA, C; NM, D; PA, E; TX

A certification was issued covering all workers separated on or after May 26, 1994.

TA-W-31,105; TA-W-31,106, TA-W-31,107, TA-W-31,108, TA-W-31,109; Mitchell Gas Services, Inc., Liquid Energy Corp., Southwestern Gas Pipeline, Inc., The Woodlands, TX & Operating in the Following States: LA, NM, PA, TX

A certification was issued covering all workers separated on or after May 26, 1994.

TA-W-31,110; TA-W-31,110A, Mitchell Energy and Development Corp, The Woodlands, TX & MND Service, Inc., The Woodlands, TX

A certification was issued covering all workers separated on or after May 26, 1994.

TA-W-31,111 & A,B; Brazos Gas Compressing Co., The Woodlands, TX, Bridgeport, TX and Meadville, TX

A certification was issued covering all workers separated on or after May 26, 1994.

TA-W-31,112; Mitchell Marketing Co., The Woodlands, TX

A certification was issued covering all workers separated on or after May 26, 1994.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103-182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the month of July and August, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an

appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determination NAFTA-TAA

NAFTA-TAA-00492 & A; Trico Industries, Inc., Bradford, PA & Huntington Park, CA

The investigation revealed that criteria (3) and (4) were not met. There was no shift in production of subsurface oilwell pump parts & components to Canada or Mexico during the period under investigation.

NAFTA-TAA-00488; Rielly Co., Inc., Valatie, NY

The investigation revealed that criteria (3) and (4) were not met. A survey revealed that although customers have declined their purchases from the subject firm they do not import apparel from Canada or Mexico.

NAFTA-TAA-00497; General Dynamics, Convair Div., San Diego, CA

The investigation revealed that criteria (3) and (4) were not met. There was no shift in production of the MD-11 fuselage shipset from the workers' firm to Canada or Mexico during the relevant period.

NAFTA-TAA-00496; Commercial Carriers, Inc., Transport Support, Inc of The Ryder Automobile Carrier Div., Newark, DE

The investigation revealed that the workers of the subject firm do not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA-TAA

NAFTA-TAA-00535; Belden Wire & Cable Co., Cord Products Div., Bensenville, IL

A certification was issued covering all workers separated on or after June 14, 1994.

NAFTA-TAA-00505; Salmon Intermountain, Inc., Salmon, ID

A certification was issued covering all workers separated on or after June 22, 1994.

NAFTA-TAA-00515; Stride-Rite Corp., Stride-Rite Manufacturing of Missouri, Fulton, MO

A certification was issued covering all workers separated on or after June 29, 1994.

NAFTA-TAA-00495; Emerson Electric Co., Motor Div., Ava, MO

A certification was issued covering all workers separated on or after June 17, 1994.

NAFTA-TAA-00499; Tillotson Corp., Tilly Balloon, Inc., Fall River, MA

A certification was issued covering all workers separated on or after June 15, 1994.

NAFTA-TAA-00501; Wadesboro Manufacturing Manufacturing Co., Inc., Wadesboro, NC

A certification was issued covering all workers separated on or after June 22, 1994.

NAFTA-TAA-00502; Gerhart Sales, El Paso, TX

A certification was issued covering all workers separated on or after June 19, 1994.

NAFTA-TAA-00531; Hayward Pool Products, Inc., Elizabeth, NJ

A certification was issued covering all workers separated on or after July 6, 1994.

I hereby certify that the aforementioned determinations were issued during the months of July and August, 1995. Copies of these determinations are available for inspection in Room C-4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 7, 1995.

Russell Kile,

Acting Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 95-20263 Filed 8-15-95; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

[Docket No. NRTL-3-93]

Factory Mutual Research Corporation

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of Renewal of Recognition as a Nationally Recognized Testing Laboratory.

SUMMARY: This notice announces the Agency's final decision on the Factory Mutual Research Corporation for renewal of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

EFFECTIVE DATE: This recognition will become effective on August 16, 1995 and will be valid for a period of five years from the date, until August 16, 2000, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653, Washington, D.C. 20210.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

Notice is hereby given that the Factory Mutual Research Corporation (FMRC) which made application pursuant to 29 CFR 1910.7 for renewal of its recognition as a Nationally Recognized Testing Laboratory, has had its recognition renewed as an NRTL for the equipment or material listed below.

The addresses of the laboratories covered by this application are:
1151 Boston-Providence Turnpike,
Norwood, Massachusetts 02062, 743
Reynolds Road, West Gloucester,
Rhode Island 02814

Background

When OSHA published its standard for NRTLs at 29 CFR 1910.7, it temporarily recognized Factory Mutual Research Corporation (FMRC) and Underwriters Laboratories Incorporated (UL). Both organizations had already been referenced by the Occupational Safety and Health Administration (OSHA) as acceptable organizations for testing or certifying certain workplace equipment and materials. Appendix A of section 1907 stated, in part, that Factory Mutual Research Corporation was recognized temporarily as a nationally recognized testing laboratory by the Assistant Secretary for a five-year period from June 13, 1988 through June 13, 1993. At the end of this five-year period FMRC was required to apply for renewal of that OSHA recognition utilizing certain specified procedures. FMRC applied for renewal of its recognition as an NRTL within the specified time frame (application dated October 8, 1992) and retained temporary recognition pending OSHA's final decision in this renewal process. The final on-site review report, consisting of on-site evaluations of FMRC testing facilities, including administrative and

technical practices, located in Norwood, Massachusetts, and West Gloucester, Rhode Island, (Exhibit 2B, dated April 19, 1994, and Exhibit 2C, dated March 9, 1995) and the OSHA staff recommendation, were subsequently forwarded to the Assistant Secretary for a preliminary finding on the application. A notice of FMRC's application for renewal together with a positive preliminary finding was published in the **Federal Register** on March 29, 1995 (60 FR 16167). Interested parties were invited to submit comments.

There were no responses to the **Federal Register** notice of the FMRC application and preliminary finding (Docket No. NRTL-3-93).

The Occupational Safety and Health Administration has evaluated the entire record in relation to the regulations set out in 29 CFR 1910.7 and makes the following findings:

Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

The on-site review reports indicate that FMRC has facilities, personnel, and testing equipment which are appropriate for the areas of recognition it seeks. The laboratories have available all of the general test equipment to perform the testing required by the standards. If any additional test equipment is necessary, it will be purchased or leased as required.

The two FMRC facilities have adequate equipment calibration procedures. There is a Test Equipment Coordinator who is responsible for the accuracy of test equipment as well as for reference measurement standards. All electrical measuring instruments are calibrated at least once a year.

FMRC utilizes an alpha-numeric system for tracking jobs in-house. The Operations and Quality Assurance Manual addresses record keeping requirements, including retention times. Test procedures are also listed in this Manual. All test standards are stored on-site.

The Operations and Quality Assurance manual documents the procedures for the control of quality of operations. It includes methods for evaluating and correcting quality system problems and includes all necessary

components for an effective quality assurance program.

Monitoring the quality assurance program is carried out routinely. At least one audit annually of the Approval Division is carried out, and additional audits may be required for specific problems or conditions. Programs exist for employee feedback, and for problem identification and correction.

Follow-Up and Field Inspection Procedures

Section 1910.7(b)(2) requires that the NRTL provide certain follow-up procedures, to the extent necessary, for the particular equipment or material to be listed, labeled, or accepted. These include implementation of control procedures for identifying the listed or labeled equipment or materials, inspecting the production run at factories to assure conformance with test standards, and conducting field inspections to monitor and assure the proper use of the label.

FMRC's follow-up program is detailed in the Operations and Quality Assurance Manual and discusses the initial and subsequent factory follow-up procedures for the approval/listing process.

Factory Mutual Research Corporation has sections dealing with approval or listing status and approval guide and listing procedures in its Operations and Quality Assurance Manual. These sections deal with requirements and limitations for the use of FMRC's certification marks.

Independence

Section 1910.7(b)(3) requires that the NRTL be completely independent of employers subject to the tested equipment requirements, and of any manufacturers or vendors of equipment or materials being tested for these purposes.

OSHA believes, based upon an examination of the application, that the Factory Mutual Research Corporation is independent of employers subject to the tested equipment requirements and of any manufacturers or vendors of equipment or materials being tested for these purposes, within the meaning of 29 CFR 1910.7(b)(3).

Creditable Reports/Complaint Handling

Section 1910.7(b)(4) provides that an OSHA recognized NRTL must maintain effective procedures for producing creditable findings and reports that are objective and without bias, as well as for handling complaints and disputes under a fair and reasonable system.

FMRC's application as well as the on-site review report indicate that FMRC

does maintain effective procedures for producing creditable findings and reports that are objective.

The Operations and Quality Assurance Manual describes in detail the various aspects of procedures for testing and for all written reports, as well as record keeping requirements including retention times.

With regard to the handling of complaints or contested results, if clients, FMRC personnel, users, or others, file a complaint or disagree with a decision relating to the test standard, engineering, use, or inspection, they can present and discuss their views with various administrative levels of FMRC personnel, up to and including the Chief Operating Officer in an effort to resolve any disagreement.

Test Standards

Section 1910.7 requires that an NRTL use "appropriate test standards", which are defined, in part, to include any standard that is currently designated as an American National Standards Institute (ANSI) safety designated product standard or an American Society for Testing and Materials (ASTM) test standard used for evaluation of products or materials. As to the non-ANSI, FMRC and UL test standards for which FMRC has applied to test products to, OSHA examined the status of the Factory Mutual Research Corporations standards and Underwriters Laboratories Inc. Standards for Safety with particular attention to the method of their development, revision and implementation, and determined that both groups of standards are appropriate test standards under the criteria described in 29 CFR 1910.7(c) (1), (2), and (3). That is, these standards specify the safety requirements for specific equipment or classes of equipment and are recognized in the United States as safety standards providing adequate levels of safety; they are compatible and remain current with periodic revisions of applicable national codes and installation standards; and they are developed by a standards developing organization under a method providing for input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the safety fields involved.

Programs and Procedures

As discussed in the **Federal Register** notice (60 FR 16167), FMRC administers several operational programs and procedures. The following programs have been examined and found to be acceptable to OSHA on the basis of the

procedures and specific criteria as detailed in 60 FR 12980, March 9, 1995, pertaining to the types of programs and procedures that NRTLs may engage in under the OSHA/NRTL program. See Exhibit 2C, an addendum to the original "On-Site Review Report (Survey)", dated March 10, 1995, (Exhibit 2B), which reviews the following programs on the basis of their conformance to the programs described in 60 FR 12980, March 9, 1995, "Nationally Recognized Testing Laboratories; Clarification of the Types of Programs and Procedures".

Basic Program—This program is one in which FMRC performs all of the necessary product testing and evaluation in-house prior to issuing a certification.

Witnessed Test Data Program—This program is utilized when characteristics such as the size, complexity, or uniqueness of a product require testing at the manufacturer's or other outside laboratory's facilities, or when a manufacturer is entering the Laboratory Qualification Program. The tests are in accordance with the appropriate recognized standard(s) and are witnessed by an FMRC technical representative. The specific information required by the FMRC Operations and Quality Assurance Manual to ensure equivalency with tests conducted at FMRC is recorded in the Project Data Record (test notebook).

FMRC Laboratory Qualification Program—Since 1979, manufacturers of electrical utilization equipment (process control and test and measuring instrumentation for use in ordinary "non-hazardous" locations) meeting specific criteria, have been allowed to submit test data to FMRC to be used as a part of the approval process. The data submitted by the manufacturer may be used in lieu of tests conducted by FMRC or, at its discretion, FMRC may conduct comparative tests to ensure accurateness of manufacturers' supplied data. This includes a review of the product submitted for approval.

The qualification procedures include on-site assessments and an evaluation for usage of proper standards, client personnel, testing facilities and verification testing. Part of the program includes periodic review visits.

A specific department of the client is qualified to generate the necessary test and evaluation information that a product meets the appropriate standards. Test equipment, calibration program, test personnel, test procedures, design origination and change, and the marking and documentation submittal are specified in the Laboratory Qualification Report. The information

and a sample product is sent to FMRC for its review.

The program allows for unannounced on-site visits to the manufacturer's facility to verify compliance with the program. An up-to-date listing is maintained of the manufacturing laboratories that are qualified under this program.

International Electrotechnical Commission (IEC) CB Scheme—The IEC-CB Scheme is a certification program for gaining product approval recognition on an international level. Products tested by any National Certification Body (NCB) that participates in the CB Scheme will be accepted for approval without the need for retesting in other member (of the CB Scheme) countries.

Eligibility in the CB Scheme requires that members be recognized by their own governments as an accredited national organization having the authority to issue a listing or place a mark on products that meet specific national standards.

FMRC is accredited by the IEC for testing and evaluating electrical equipment for measurement, processing equipment including electrical business equipment.

Interlaboratory Agreements—FMRC tests products for, and accepts test data from, internationally recognized laboratories which have interlaboratory agreements with FMRC. The laboratory generating the test data conducts these tests in accordance with the nationally recognized standards of the laboratory certifying the product. Regularly scheduled audits are conducted at each laboratory to ensure the competence of the laboratory. The audits include a review of personnel, test equipment, test procedures, documentation control, and quality of operation.

FMRC asserts that it may accept components which have been tested at other laboratories after review of the test report and any additional evaluation necessary. The evaluation by the applicant includes an assurance that the other laboratory's performance meets the level that FMRC would provide had it performed the service.

Final Decision and Order

Based upon a preponderance of the evidence resulting from an examination of the complete application, the supporting documentation, and the OSHA staff finding including the on-site report, OSHA finds that the Factory Mutual Research Corporation has met the requirements of 29 CFR 1910.7 to have its recognition renewed by OSHA as a Nationally Recognized Testing

Laboratory to test and certify certain equipment or materials.

Pursuant to the authority in 29 CFR 1910.7, the Factory Mutual Research Corporation's recognition as a Nationally Recognized Testing Laboratory is hereby renewed subject to the limitations and conditions listed below:

Limitations

This recognition is limited to equipment or materials which, under 29 CFR Part 1910, require testing, listing, labeling, approval, acceptance, or certification, by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following test standards for the testing and certification of equipment or materials included within the scope of these standards:

- FMRC has stated that all the standards in these categories are used to test equipment or materials which may be used in environments under OSHA's jurisdiction. These standards are all considered appropriate test standards under 29 CFR 1910.7(c):

FMRC 1110—Indicator Posts
 FMRC 1221—Backflow Preventers
 FMRC 1321—Controllers for Electric Motor Driven Fire Pumps
 FMRC 1333—Diesel Engine Fire Dump Drivers
 FMRC 1635—Plastic Pipe and Fittings for Automatic Sprinkler Systems
 FMRC 3600—Electrical Equipment for Use in Hazardous (Classified) Locations, General Requirements
 FMRC 3610—Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II and III, Division 1 Hazardous (Classified) Locations
 FMRC 3611—Electrical Equipment for Use in Class I, Division 2; Class II, Division 2; and Class III, Division 1 and 2 Hazardous Locations
 FMRC 3615—Explosionproof Electrical Equipment, General Requirements
 FMRC 3620—Purged and Pressurized Electrical Equipment for Hazardous (Classified) Locations
 FMRC 3810—Electrical and Electronic Test, Measuring, and Process Control Equipment
 FMRC 6051—Safety Containers and Filing, Supply and Disposal Containers
 FMRC 6310—Combustible Gas Detectors
 FMRC 7812—Industrial Trucks—LP-Gas
 FMRC 7816—Industrial Trucks—LP-Gas Dual Fuel
 FMRC 7820—Industrial Trucks—Electric
 ANSI Z8.1—Commercial Laundry and Drycleaning Equipment and Operations

ANSI/ISA S12.12—Electrical Equipment for Use in Class I, Division 2, Hazardous (Classified) Locations
 ANSI/ISA S12.13.1—Performance Requirements for Combustible Gas Detectors
 ANSI/ISA S12.15—Hydrogen Sulfide Detection Instruments
 ANSI/ISA S82.01—Electrical and Electronic Test, Measuring Equipment
 ANSI/ISA S82.02—Electrical and Electronic Test and Measuring Equipment
 ANSI/ISA S82.03—Electrical and Electronic Process Measuring and Control
 ANSI/NEMA ICS 2—Industrial Control Devices, Controllers and Assemblies
 ANSI/NEMA 250—Enclosures for Electrical Equipment
 ANSI/NFPA 11—Low Expansion Foam and Combined Agent Systems
 ANSI/NFPA 11A—Medium- and High-Expansion Foam Systems
 ANSI/NFPA 12—Carbon Dioxide Extinguishing Systems
 ANSI/NFPA 12A—Halon 1301 Fire Extinguishing Agent Systems
 ANSI/NFPA 13—Installation of Sprinkler Systems
 ANSI/NFPA 16—Deluge Foam-Water Sprinkler and Spray Systems
 ANSI/NFPA 17—Dry Chemical Extinguishing Systems
 ANSI/NFPA 20—Centrifugal Fire Pumps
 ANSI/NFPA 72—Installation, Maintenance, and Use of Protective Signaling Systems
 ANSI/UL 8—Foam Fire Extinguishers
 ANSI/UL 38—Manually Actuated Signaling Boxes for Use With Fire-Protective Signaling Systems
 ANSI/UL 154—Carbon-Dioxide Fire Extinguishers
 ANSI/UL 162—Foam Equipment and Liquid Concentrates
 ANSI/UL 299—Dry Chemical Fire Extinguishers
 ANSI/UL 346—Waterflow Indicators for Fire Protective Signaling Systems
 ANSI/UL 347—High-Voltage Industrial Control Equipment
 ANSI/UL 508—Electric Industrial Control Equipment
 ANSI/UL 558—Industrial Trucks, Internal Combustion Engine-Powered
 ANSI/UL 583—Electric-Battery-Powered Industrial Trucks
 ANSI/UL 626—2½ Gallon Stored-Pressure, Water-Type Fire Extinguishers
 UL 664—Commercial (Class IV) Electric Dry-Cleaning Machines
 ANSI/UL 674—Electric Motors and Generators for Use in Hazardous (Classified) Locations

ANSI/UL 698—Industrial Control Equipment for Use in Hazardous (Classified) Locations
 ANSI/UL 711—Fire Extinguishers, Rating and Fire Testing of
 ANSI/UL 753—Alarms Accessories for Automatic Water-Supply Control Valves
 ANSI/UL 781—Portable Electric Lighting Units for Use in Hazardous (Classified) Locations
 ANSI/UL 823—Electric Heaters for Use in Hazardous (Classified) Locations
 ANSI/UL 827—Central Stations for Watchmen, Fire-Alarm, and Supervisory Services
 ANSI/UL 844—Electric Lighting Fixtures for Use in Hazardous (Classified) Locations
 ANSI/UL 863—Electric Time-Indicating and -Recording Appliances
 ANSI/UL 864—Control Units for Fire-Protective Signaling Systems
 ANSI/UL 877—Circuit Breakers and Circuit-Breaker Enclosure for Use in Hazardous (Classified) Locations
 ANSI/UL 886—Electrical Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations
 ANSI/UL 894—Switches for Use in Hazardous (Classified) Locations
 ANSI/UL 913—Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division I, Hazardous (Classified) Locations
 ANSI/UL 1002—Electrically Operated Valve for Use in Hazardous (Classified) Locations
 ANSI/UL 1058—Halogen Agent Extinguishing System Units
 ANSI/UL 1093—Halogenated Agent Fire Extinguishers
 ANSI/UL 1203—Explosion-Proof and Dust-Ignition-Proof Electrical Equipment for Use in Hazardous (Classified) Locations
 UL 1206—Electrical Commercial Clothes-Washing Equipment
 ANSI/UL 1207—Sewage Pumps for Use in Hazardous (Classified) Locations
 UL 1236—Electric Battery Chargers
 UL 1240—Electric Commercial Clothes-Drying Equipment
 ANSI/UL 1254—Pre-Engineered Dry Chemical Extinguishing System Units
 ANSI/UL 1262—Laboratory Equipment
 ANSI/UL 1555—Electric Coin-Operated Clothes-Washing Equipment
 ANSI/UL 1556—Electric Coin-Operated Clothes-Drying Equipment

Conditions

The Factory Mutual Research Corporation shall also abide by the following conditions of its recognition, in addition to those already required by 29 CFR 1910.7:

- The Occupational Safety and Health Administration shall be allowed access to FMRC's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

- If FMRC has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

- FMRC shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, FMRC agrees that it will allow no representation that it is either a recognized or accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

- FMRC shall inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, including details;

- FMRC shall continue to meet the requirements for recognition in all areas where it has been recognized; and

- FMRC shall always cooperate with OSHA to assure with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

Effective Date: This recognition will become effective on August 16, 1995 and will be valid for a period of five years from that date, until August 16, 2000, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington, D.C. this 10th day of August, 1995.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 95-20259 Filed 8-15-95; 8:45 am]

BILLING CODE 4510-26-M

[Docket No. NRTL-3-92]

TUV Rheinland of North America, Inc.

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of Recognition as a Nationally Recognized Testing Laboratory.

SUMMARY: This notice announces the Agency's final decision on the application of TUV Rheinland of North America as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

EFFECTIVE DATE: This recognition will become effective on August 16, 1995 and will be valid for a period of five years from that date, until August 16, 2000, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653, Washington, D.C. 20210.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

Notice is hereby given that TUV Rheinland of North America, Inc. (TUV), which made application for recognition pursuant to 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory, has been recognized as a Nationally Recognized Testing Laboratory for the equipment or material listed below.

The address of the laboratory covered by this recognition is: TUV Rheinland of North America, Inc., 12 Commerce Road, Newtown, Connecticut 06470.

Background

TUV Rheinland of North America, Inc. is a privately held Product Safety and Quality Assurance Testing firm with offices throughout the United States and Canada. TUV Rheinland of North America, Inc. is wholly owned by TÜV Rheinland e. V. of Cologne, Germany. The only facility for which TUV has requested recognition is its North American Headquarters located in Newtown, Connecticut (see Exhibit 2, C., p 2 of cover letter, and Attachments 2, 3, and 4). TUV Rheinland of North America, Inc. is a U.S. corporation incorporated in the state of Delaware in 1983. (See Ex. 2, E., Att. 5).

On November 19, 1993, the Occupational Safety and Health Administration published a notice of application for recognition as a nationally recognized testing laboratory of TUV Rheinland of North America, Inc. in the **Federal Register**, pursuant to 29 CFR 1910.7 (58 FR 61101). The notice included a preliminary finding that TUV could meet the requirements for recognition detailed in 29 CFR 1910.7 and it invited public comment on the application by January 18, 1994.

On January 6, 1994, MET Laboratories, Inc. (MET) submitted comments in response to the preliminary finding (58 FR 61101) opposing TUV's recognition as a NRTL primarily based upon OSHA's not having referenced a determination of TUV/NA's status as either a foreign entity or foreign based. (See Ex. 4-1).

On January 12, 1994, ACIL (formerly, the American Council of Independent Laboratories, Inc.) requested an extension of time in which to submit comments on the application (Ex. 4-2). The ACIL claimed that its preliminary investigation had uncovered "substantial deficiencies" in the application and that more time was necessary to submit pertinent documentation related to the instant application. ACIL raised the issue of whether the applicant is completely independent from the parent organization. According to the ACIL, the resolution of the questions raised would require, among other things, the study and analysis of relevant German laws and requested additional time until March 18, 1994, to file its comments on TUV's application. (See Ex. 4-2).

The applicant responded to ACIL's comments on February 8, 1994, refuting ACIL's statement that TUV Rheinland of North America, Inc. may not be able to operate independently of TÜV Rheinland of Cologne. (See Ex. 5).

After a careful review of all comments, the request for an extension of time for comment was accepted by OSHA, and the comment period was actually extended until April 4, 1994, (59 FR 10432). (See Ex. 6).

Two comments were received in response to 59 FR 10432, the **Federal Register** notice of extension of the comment period.

One comment, dated March 3, 1994, was from MET Laboratories, Inc. (MET), and discussed TUV/NA's application for a registered certification mark and the status of TUV as a U.S. corporation. (See Ex. 7-2).

The other comment was from ACIL, and was dated March 4, 1994. The major issues raised pertained to the status of TUV as "foreign based"; the improper use of a certification mark; and TUV Rheinland as an association consisting, in part, of manufacturers. (See Ex. 7-1).

After a thorough review of the comments and TUV's response, dated July 28, 1994 (Ex. 8), by both OSHA and the Office of the Solicitor of the U.S. Department of Labor, the determination was made that the applicant is independent in the sense that it is not a foreign entity or foreign based. While TUV Rheinland of North America, Inc., which is incorporated in the United States, is a subsidiary of TÜV Rheinland e. V., which is based in Cologne, Germany, it is no different from other NRTLs which are incorporated in the U.S. and owned by foreign entities, and which are not considered as foreign based. Further, the decision whether or not to certify a product under the NRTL program is made solely by TUV.